

MERCED SUPERIOR COURT LOCAL COURT RULES

e. Oral Argument

Unless otherwise ordered, counsel for each party shall be allowed fifteen (15) minutes for oral argument. The appellate or the moving party shall have the right to open and close.

(Effective July 1, 2004).

RULES 22-199: RESERVED

RULE 200: PROBATE RULES – PREFACE

It is not the court's intent in adopting these rules to cover every anticipated question or concern, but rather to provide a few additional guidelines, which are considered important for local practice. Nor does the Court intend these rules to be a research tool. The Probate Department of the Merced Superior Court encourages the use of the Probate Code, California Rules of Court, Judicial Council forms, and the publications of the Continuing Education of the Bar as valuable guidelines and references with respect to local practice.

Unless stated otherwise, all references in this Rule are to the California Probate Code.

a. Time and Place of Hearing

All uncontested probate hearings and contested matters, which are not expected to exceed twenty (20) minutes in length, shall be set at 8:30 a.m. on Monday – Thursday. All hearings which are likely to exceed twenty (20) minutes in length should be set at 10:00 a.m., on a Monday.

MERCED SUPERIOR COURT LOCAL COURT RULES

b. Applicable Rules

Except as otherwise provided in these rules, all provisions in the local general and civil law and motion rules apply to probate proceedings.

c. Appearances

(1). There is no Probate Commissioner or Examiner in Merced County. Tentative rulings are not given.

(2). Appearances are required on all petitions for appointment of conservators, and/or guardians and confirmation of sale of real or personal property and on any petition to which objections are filed.

(3). If the moving party does not appear on any calendared matters, cases involving issues which are incomplete or questionable may be continued one to two weeks or may be dropped from calendar, depending on the circumstances.

(4). See **Rule 4d** for telephone appearances.

d. Forms Approved by the Judicial Council

All probate forms printed and approved by the Judicial Council are mandatory in Merced County. Failure to use such forms may result in the Clerk's refusal to file a submitted document.

e. Orders

Except in the case of confirmation of sales, contested matters and orders requiring information from a governmental agency, the moving party shall submit the proposed order at least three (3) court days prior to the hearing date. Orders shall have the scheduled hearing date, time, and department noted on the face sheet below the title of the document.

MERCED SUPERIOR COURT LOCAL COURT RULES

f. Appointment of Representative(s)

(1). Where a petition seeks the appointment as personal representative of a person or persons other than the petitioner, a written consent to serve as personal representative must be filed for each such proposed personal representative.

(2). Each personal representative must execute and file an Acknowledgement of Receipt of Judicial Council Form “Duties and Liabilities of Personal Representative” (Form DE – 147) before the court issues letters.

g. Notices

(1). In a petition for probate of a will, all persons and organizations named in the will or codicils shall be listed.

(2). If a named devisee predeceased the decedent, that information must be provided in the notice. In cases where the devisee dies after the decedent, the date of death must be stated and notice must be mailed in care of his or her personal representative if one has been appointed, or alternatively, to another appropriate representative.

(3). A declaration specifying good faith efforts to identify and locate heirs or beneficiaries is required where the petitioner cannot determine the name or address of an heir or beneficiary to whom notice is required.

(4). If there are no known heirs of the decedent and no heirs of a predeceased spouse pursuant to Section 6402.6, a declaration to that effect shall be filed setting forth the basis for the declaration and the efforts made to locate all such heirs.

(5). The trustee of a living trust who is a beneficiary of a will shall be listed as a devisee and noticed.

MERCED SUPERIOR COURT LOCAL COURT RULES

(6). The Clerk does not handle the preparation, mailing or publication of notices. Notices must be prepared and submitted at the time of filing the applicable petition, and the moving party is responsible for all required mailings and newspaper publications.

h. Defective Notice

If the publication is correct but the mailing is defective, the hearing normally will be continued to allow enough time for the mailing of the required amended notice, and republication is not required. If the mailing is correct but the publication is defective, the matter must be taken off calendar and a new notice must be given by publication and mailing.

i. Bond

(1). Pursuant to Section 10453, if a bond is otherwise required, if full authority under the Independent Administration of Estates Act (IAEA) is sought, and if the personal representative at the time of the initial petition for probate intends to sell real property through a notice of proposed action (without court confirmation), the latter fact shall be stated in the petition to enable the court to determine whether the initial qualifying bond should be fixed to include anticipated proceeds from the sale of real property.

(2). Every person appointed as personal representative shall give a bond approved by the court before letters are issued unless otherwise waived in the will or in writing. If 2 or more persons are appointed the court may require a separate bond from each or a joint and several bond. If a joint bond is furnished, the liability on the bond is joint and several.

(3). If written waivers are attached to the petition, bond will be waived by the court pursuant to Section 8481, provided all heirs or beneficiaries are competent to act. If any such person is incompetent (e.g. minors) an appropriate representative is required to

MERCED SUPERIOR COURT LOCAL COURT RULES

waive bond on behalf of such person. This section does not apply if the will requires a bond.

(4). A personal representative who is a non resident of California and who is nominated to serve without bond, still may be required to post such bond as the court may require, where good cause of such a requirement is shown.

(5). If the will names two or more persons to serve as executors but not all serve and the will does not expressly waive bond if fewer than all serve, the court shall require each executor to give a bond unless the court waives this requirement under Probate Code section 8481(a)(2).

(6). It is the duty of the fiduciary or fiduciary's attorney, upon becoming aware a bond is insufficient to immediately apply for an order increasing the bond. Such application accompanied by a proposed order, may be made ex parte. See CEB publications for forms.

j. Creditor's Claims

(1). Creditors shall file their claims with the Clerk's office and mail a copy to the personal representative. The disposition of all such claims must be reported to the court on the Judicial Council "Allowance or Rejection of Creditor's Claim" form, prior to any distribution. This requirement also applies to fiduciaries acting under the IAEA.

(2). If the personal representative is acting under the IAEA, the court will not review the personal representative's allowance or rejection of a creditor's claim unless good cause is shown, except as to claims of the personal representative or the attorney. All claims of the personal representative or the attorney must be submitted to the court for approval.

(Effective July 1, 2004).

MERCED SUPERIOR COURT LOCAL COURT RULES

RULE 201: ACCESS TO JUVENILE COURT RECORDS

Juvenile court records may not be obtained or inspected by either civil or criminal subpoena. If a person/agency is not entitled to access under Welfare and Institutions Code sections 827-830.1, then he/she must obtain a court order from the Presiding Judge of the Juvenile Court, or another judicial officer designated by the Presiding Judge. An intentional violation of Welfare and Institutions Code section 827 is punishable by a fine of up to \$500.00.

A. Definition of Juvenile Court Records

Pursuant to Rule 5.552, subdivision (a) of the California Rules of Court, “juvenile case file” included:

- (1). All documents filed in a juvenile court case;
- (2). Reports to the court by probation officers and social workers of child welfare services programs;
- (3). Documents made available to probation officers and social workers of child welfare services programs;
- (4). Documents relating to a child concerning whom a petition has been filed in juvenile court that are maintained in the office files of probation officers and social workers of child welfare services programs;
- (5). Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and
- (6). Documents, video or audio tapes, photographs and exhibits admitted into evidence at juvenile court hearings.

MERCED SUPERIOR COURT LOCAL COURT RULES

Records relating to juvenile contacts or investigations which are maintained by a law enforcement agency, probation department or Department of Children and Family Services are confidential even if juvenile court proceedings have not been instituted.

(2) Access Without a Court Order

Pursuant to Welfare and Institutions Code sections 827-830.1, specified persons/agencies are entitled to access to juvenile records without a court order, excluding portions of the record which are otherwise confidential, and portions of the record which include the names and information of other children. In order to obtain access or copies of the records, the person/agency entitled to access must file a Declaration in Support of Access which are available and maintained in the Superior Court Clerk's Office, Juvenile Division. The following persons/agencies are entitled to access to juvenile records without a court order:

- (a) Subject child,
- (b) Attorneys for the parties, and hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child,
- (c) Court personnel,
- (d) Attorney authorized to prosecute adult criminal or juvenile matters under California law (district attorney, city attorney, city prosecutor),
- (e) Superintendent or designee of the school district where the child is enrolled or attending school (see also Welf. & Inst. Code Section 828.3),
- (f) Member of Child Protective Agencies per Penal Code section 11165.9 (police, sheriff, county probation, Department of Children and Family Services),
- (g) State Department of Social Services for the purposes delineated in Welfare and Institutions Code section 827,

MERCED SUPERIOR COURT LOCAL COURT RULES

- (h) Members of children's multi-disciplinary teams (see also Welf. & Inst. Code, sections 830, 830.1), and
- (i) Persons/agencies providing treatment or supervision of the child,
- (j) A state or local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(3) Access to Delinquency Records Where Petition Sustained on Offense Listed in Welfare and Institutions Code section 676(a).

Pursuant to Welfare and Institutions Code section 676(d), when a petition has been sustained for an offense following information contained in the court file shall be available for public inspection: (a) the charging petition, (b) the minutes of the proceedings, and (c) the orders of adjudication and disposition of the court.

- (a) The name of a minor found to have committed one of the serious violent offenses listed in Welfare and Institutions Code section 676(e) shall not be confidential, unless the court orders the name to be confidential based on good cause.

(4) Petitions to Prohibit Disclosure of Delinquency Records

Pursuant to Welfare and Institutions Code section 676(e) any party may petition the juvenile court to prohibit disclosure to the public of any file or record. The juvenile court shall prohibit disclosure of such record if it finds that the harm to the child, victims, witnesses, or public from the disclosure outweighs the benefit of public knowledge.

(5) Welfare and Institutions Code section 827 & 828 Petitions

All Petitions for Disclosure of Confidential Juvenile Records and Petitions To Obtain Report of Law Enforcement Agency/Juvenile (Judicial Council Form J570 and JV-575, respectively) shall be filed at the Juvenile Court. (*Effective Jan 1, 2009*)

MERCED SUPERIOR COURT LOCAL COURT RULES

RULES 202-299: *RESERVED*

RULE 300: PETITION FOR APPROVAL OF MINOR’S COMPROMISE

a. Contents of Petition

A petition for court approval of a compromise or covenant not to sue under the Probate Code or CCP 372 must be verified by Petitioner and contain a full disclosure of all relevant information bearing upon the reasonableness of the compromise, including:

- (1) Name, birthdate, age and sex of minor;
- (2) An account of the facts and circumstances which gave rise to the claim or injury;
- (3) A description of the nature and extent of the injury and whether it is permanent or temporary;
- (4) All doctors reports containing a diagnosis, prognosis and present condition of the claimant;
- (5) Where payment for medical treatment is sought all medical expenses, insurance payments and net amounts owed to each provider;
- (6) The amount of attorney fees, their basis and an itemization of costs;
- (7) The gross and net amount of the proposed settlement;
- (8) How the proceeds of the settlement will be distributed;
- (9) Amounts paid to other claimants;
- (10) Whether or not the petitioner is a plaintiff in the same action as the minor or a claimant against the recovery, and if so whether the pendency or disposition of petitioner’s claim has affected the minor’s compromise;

MERCED SUPERIOR COURT LOCAL COURT RULES

(11) If settlement money is to be deposited in an account subject to withdrawal only upon order of the court, the name and address of the depository;

(12) Whether notice pursuant to Welfare and Institutions Code Section 14124.73 has been given;

(13) If an order for payment to special needs trust is requested, a statement of the method by which all statutory liens will be satisfied under Probate Code 3604.

b. Attorney Disclosure

If the petitioner has been represented or assisted by an attorney the petition must disclose the name, state bar number, law firm and business address of the attorney. It must also disclose whether the attorney became involved at the instance of any party against whom the claim is asserted, or an insurance carrier employed by any other party. If any fees or other compensation has been paid the petition must disclose who paid those fees or other compensation; if no fees have been paid, then whether the attorney expects any fees and if so the amount and who will pay them. The terms of the agreement between the petitioner and the attorney must also be set forth in the petition.

c. Personal Appearance

The person compromising the claim and the minor must attend the hearing unless the court, for good cause, dispenses with the requirement of personal appearance.

d. Attendance of Witnesses

The court may require witnesses, including the treating physician, to attend the hearing.

MERCED SUPERIOR COURT LOCAL COURT RULES

e. Withdrawal of Funds

A petition for withdrawal of funds from the account may be considered ex parte or set for hearing at the discretion of the court. Parents are advised that monies in blocked accounts are not available for payment of services ordinarily provided by parents.

(Effective July 1, 2004).

FAMILY LAW

GENERAL POLICY STATEMENT

It is the policy of the Merced County Superior Court to manage all family law cases from the time the first order to show cause or at issue memorandum is filed, to focus on settlement at the earliest possible date, to reduce the cost of litigation and to reach a fair and final resolution of the case expeditiously. These rules are intended to provide generally uniform practice and procedures among departments involved in family law matters in Merced County. Due to often unique facts or procedural inconsistencies, these rules should be considered as guidelines to which the Court will generally adhere.

RULE 401: MATTERS ASSIGNED TO THE FAMILY LAW DEPARTMENT

All proceedings filed in the following matters are currently assigned to the Family Law Department:

(A). Matters arising from the California Family Code, including cases where the Local Child Support Agency appears on behalf of the County of Merced or any party.

(B). Matters arising from the Uniform Divorce Recognition Act, Family Code §§2090-2093.

(C). Matters arising from the Uniform Child Custody Jurisdiction Act, Family Code §§3400-3425.

(D). Matters arising from the Uniform Parentage Act, Family Code §§7600-7643.

(E). Matters arising from the Domestic Violence Prevention Act, Family Code §§6200-6305.

MERCED SUPERIOR COURT LOCAL COURT RULES

(F). Matters arising from the UEIFSA provision of the Family Code and orders to show cause, motions, or trials in actions brought by the Local Child Support Agency under the provisions of Family Code Sections 17000 et. seq.

(G). Matters arising from Family Code §§4900-4903, Support of Adult Child(ren) or Parents.

(H). Post-dissolution judgment actions, involving omitted or reserved property issues.

(I). Non-marital property right actions consolidated for trial with Family Code, except those cases in which a jury trial has been demanded.

(J). Mediation proceedings in Guardianship actions.

(Effective July 1, 2004).

RULE 402: MOTIONS AND ORDER TO SHOW CAUSE CALENDAR

a. Calendar Management Short and Long Cause Matters

(1). Short Cause matters are those matters requiring no more than 15 minutes of the Court's time. Counsel shall be prepared to present their case based upon pleadings, declarations, and offers of proof. Counsel shall be prepared to explain why any live testimony is necessary. Generally no live testimony is allowed in Short Cause matters pursuant to CRC 323 and *Reifler v. Superior Court* (1974) 39 Cal.App.3d 479. Short Cause matters shall be set for hearing on Tuesdays, Thursdays or Fridays at 8:15 a.m. or on Tuesdays or Fridays at 1:30 p.m..

(2). Long Cause Matters are those matters requiring more than 15 minutes of the Court's time. The long cause calendar shall be heard on Mondays at either 8:15 a.m. or 1:30 p.m. Counsel shall meet and confer prior to the call of the case and determine if the anticipated hearing time exceeds 15 minutes. If both concur they shall appear in court and obtain a long cause date. If the time estimate of either party is exceeded, the Court may in its discretion, rule without further hearing; defer the matter to the end of the calendar if time permits, continue the matter to the next available date or order the matter off calendar.

(3). Only matters involving two self-represented parties shall be set on Wednesdays at 8:15 a.m.